

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 RON WATERMAN,

8 Petitioner,

9 v.

10 KAREN BRUNSON,

11 Respondent.

No. C08-375MJP

ORDER DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY

12
13 This matter comes before the Court on Petitioner Waterman's notice of appeal, which the
14 clerk has construed as a request for a certificate of appealability. (See Dkt. No. 11.)

15 In a March 2008 Report and Recommendation, Magistrate Judge Theiler's recommended
16 that the Court deny Petitioner's habeas petition without prejudice because Petitioner has not
17 exhausted his state court remedies. On June 6, the Court agreed with the recommendation and
18 denied the petition without prejudice. (Dkt. No. 9.) Mr. Waterman now seeks to appeal the Court's
19 denial of the petition.


20 A habeas petitioner can appeal the denial of a 28 U.S.C. § 2254 petition only after obtaining
21 a "certificate of appealability" from a federal circuit or district court. 28 U.S.C. § 2253(c); United
22 States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir. 1997). The statute provides that the Court may
23 only issue a certificate of appealability "if the applicant has made a substantial showing of the denial
24 of a constitutional right." 28 U.S.C. § 2253(c). As the Supreme Court has explained, this means that
25 the petitioner "must demonstrate that reasonable jurists would find the district court's assessment of
26 the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). A

1 petitioner must show that “reasonable jurists could debate whether ... the petition should have been
2 resolved in a different manner or that the issues presented were adequate to deserve encouragement
3 to proceed further.” Id. The Court’s focus is “the debatability of the underlying constitutional claim,
4 not the resolution of that debate.” Miller-El v. Cockrell, 537 U.S. 322, 342 (2003). A claim is
5 debatable “even though every jurist of reason might agree, after the [certificate] has been granted
6 and the case received full consideration, that petitioner will not prevail.” Id. at 338.

7 Mr. Waterman has not made a substantial showing of the denial of a constitutional right.
8 And the Court does not believe that reasonable jurists would find the Court’s assessment of the
9 claims debatable or wrong. The motion for a certificate of appealability is therefore DENIED.

10 The Clerk is directed to send copies of this order to Mr. Waterman.

11 Dated this 20th day of August, 2008.

12
13 
14 Marsha J. Pechman
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26